

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**IN THE MATTER OF THE CONTEST  
OF THE PRIMARY ELECTION  
CANDIDACY OF MICHAEL FLETCHER  
FOR THE OFFICE OF CITY COUNCIL  
FOR THE CITY OF KANSAS CITY  
DISTRICT NO. 3, SHARON SANDERS BROOKS**

**RESPONDENT,**

**v.  
MICHAEL ROBERT FLETCHER**

**APPELLANT.**

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DOCKET NUMBER WD73609  
DATE: March 8, 2011

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Appeal From:

Jackson County Circuit Court  
The Honorable Ann Mesle, Judge

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Appellate Judges:

Special Division: James E. Welsh, Presiding Judge, Mark D. Pfeiffer, Judge and Gary D. Witt, Judge

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Attorneys:

Philip O. Willoughby, Jr., Arnold Robert Day, Jr., and Clinton Adams, Jr., Kansas City, MO, for respondent.

Michael T. Yonke, Hans H. van Zanten and Thomas R. Onik, Kansas City, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

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No. WD73609

Jackson County

Before Special Division: James E. Welsh, Presiding Judge, Mark D. Pfeiffer, Judge and Gary D. Witt, Judge

This is an election contest that arises out of the 2011 Election for the Office of City Council for the City of Kansas City, District Number Three (the "Office"). Sharon Sanders Brooks ("Brooks"), a candidate for the Office, sued Michael Robert Fletcher ("Fletcher"), who is also a candidate for the Office, claiming that Fletcher failed to meet the residency requirements for this Office.

The gravamen of Brooks's allegations and evidence was that Fletcher was disqualified as a candidate for the Office because Fletcher made several representations in two distinct federal lawsuits wherein he appeared *pro se* and in each of the cases signed pleadings in which, for purposes of obtaining diversity jurisdiction, he repeatedly stated that he was domiciled in California. After a trial on the merits of Brooks's claims, the trial court granted the requested relief of disqualifying Fletcher from the ballot under the doctrine of judicial estoppel. Fletcher now appeals.

**WE AFFIRM**

In Point One, Fletcher argues the trial court erred in applying the doctrine of judicial estoppel because: (1) there was not sufficient evidence presented to support a finding that he was successful in his attempts in convincing California courts that he was domiciled in California; (2) there was no evidence presented that the trial court was misled by Fletcher's claim of Kansas City residency; (3) there was no evidence that Fletcher's allegations of California residency were made under oath during the course of a trial; (4) that Fletcher's allegations that he was domiciled in California are not clearly inconsistent with his position before the trial court; and (5) that his position before the trial court did not give him an unfair advantage or impose an unfair detriment on Brooks.

“Judicial estoppel will lie to prevent litigants from taking a position, ‘in one judicial proceeding, thereby obtaining benefits from that position in that instance and later, in a second proceeding, taking a contrary position in order to obtain benefits ... at that time.’”

Under the U.S. Supreme Court precedent, the factors to be considered are not fixed or inflexible prerequisites.

The representations by Fletcher in his federal actions were “clearly inconsistent” with the position he now takes in arguing that he is domiciled in Missouri and therefore qualified to run for the Office. The legal test of domicile for purposes of diversity jurisdiction in federal courts is, not surprisingly, similar to the test we employ in determining whether a candidate is domiciled in the State of Missouri pursuant to Article IV, Section Three of the Missouri Constitution.

We cannot find that the trial court erred in concluding the following:

Necessarily, Fletcher wants the courts in California to rely on his assertions that he is domiciled in California for the benefits of claiming that domicile in his federal litigation while claiming to this court that he is domiciled in Missouri for the benefits that he seeks to obtain here. He cannot claim both states as his domicile and will be precluded from doing so.

Accordingly, Point One is denied.

In Point Two, Fletcher complains that the trial court abused its discretion by refusing to disqualify Sharon Brooks’s counsel, Clinton Adams, Jr., as being in violation of Missouri Rule of Professional Conduct 4-1.9(a).

Specifically, the basis of this motion was that counsel for Sharon Sanders Brooks, Clinton Adams, Jr. (“Adams”), should be disqualified due to a conflict of interest because Fletcher made a decision to run for City Council in 2008 and discussed his decision to run with Adams. Fletcher acknowledges that he had no written contract with Adams and never was billed or paid for any legal advice. Fletcher contended that he had numerous confidential conversations with Adams wherein Adams provided legal advice on such subjects as “residency.” Adams testified that all he provided Fletcher was political advice.

After the trial court ruled against Fletcher on this issue, she invited counsel to file a writ if he believed the ruling was in error. Fletcher, through counsel, affirmatively represented to the trial court that he desired instead to have a trial on the merits of the claims presented. Accordingly, Fletcher waived the issue.

Further, the trial court indicated on the record that if any evidence was adduced at trial that Fletcher believed was discovered through confidential communication that he had with Adams that she would look favorably upon any objections thereto. Fletcher did not make a single objection on this basis and, on appeal, points to no evidence that was admitted at trial that prejudiced him as a result of his meetings with Adams. The bulk of the relevant evidence adduced at trial by Brooks was from public documents from the actions Fletcher filed in federal court. Therefore, Fletcher has not shown any prejudice to himself, nor has he shown a conflict that would call into question the integrity of the adversarial process. Point Two is denied.

Opinion by Gary D. Witt, Judge

March 8, 2011

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